

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TAMMY FREIS)	
Claimant)	
VS.)	
)	Docket No. 234,506
TRAVEL & TRANSPORTATION, INC.)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the preliminary hearing Order dated January 28, 1999, entered by Administrative Law Judge Steven J. Howard.

ISSUES

This is a claim for a December 16, 1997 accident. Claimant slipped and fell as she was going to work and walking from a parking lot into the office building where respondent and others maintain offices. The preliminary hearing was tried to the Judge on stipulated facts. The issue before the Judge was whether the accident arose out of and in the course of employment. Without stating a reason, the Judge denied benefits.

The issues before the Board on this appeal are:

1. For purposes of the going and coming rule, does an employer make a parking lot, which it neither owns nor maintains, part of its premises by directing its employees to park in a designated area?
2. Did claimant prove (1) that her accident occurred "on the only available route to or from work," (2) that the route from the employee parking area to respondent's offices possessed "a special risk or hazard," and (3) that the route was "not used by the public except in dealings with the employer"?

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

- (1) Tammy Freis worked for Travel & Transportation, Inc. at an office located in Shawnee Mission, Kansas.
- (2) On December 16, 1997, Ms. Freis fell as she was walking in a parking lot to enter the office building where Travel & Transportation maintains offices.
- (3) Along with other tenants, Travel & Transportation leased space in the office building where it was located. Travel & Transportation neither owned nor maintained the parking lot where Ms. Freis fell.
- (4) The parking lot was used by other tenants of the office building where Ms. Freis worked.
- (5) Travel & Transportation designated both the area of the parking lot where Ms. Freis parked and the door that she used to enter the office building. The parking lot and door were available to the general public and used by the public to visit other tenants.

CONCLUSIONS OF LAW

- (1) The preliminary hearing Order should be affirmed.
- (2) Accidents occurring while employees are on their way to work are generally not compensable. But accidents that occur either on an employer's premises or on the only available route to work may be compensable depending upon the facts.

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. **An employee shall not be construed as being on the way to assume the duties of employment** or having left such duties at a time **when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.**¹ (Emphasis added.)

¹ K.S.A. 1997 Supp. 44-508(f).

(3) The above statute is a codification of Kansas' "going and coming" rule. And the statute permits only two exceptions to that rule - a "premises" exception and a "special hazard" exception.²

(4) Kansas narrowly construes "premises" to be a place either controlled by the employer or where a worker may reasonably be when performing his or her job duties.³

(5) Because of that construction, the Appeals Board concludes that the parking lot was not a part of Travel & Transportation's premises. The lot was neither owned nor maintained by that company. The lot was used by other tenants and their visitors. By designating where its employees should park, the company did not exercise such control over the parking lot so as to render it part of its premises.

(6) Before the "special hazard" exception will apply, the accident must occur (1) on the only route available to or from work, (2) the route possesses a special risk or hazard, and (3) the route is used by the public, if at all, only to deal with the employer. The worker must prove all three elements.

(7) The Appeals Board concludes that Ms. Freis has failed to prove the three required elements of the "special hazard" exception. First, the risk of injury to Ms. Freis in the parking lot and in the office building on her way to her company's office did not possess a special risk. Second, the route was available and used by other building tenants and their visitors for purposes other than in dealings with Travel & Transportation.

(8) For future reference, counsel should omit attaching copies of the hearing transcripts to their briefs as the original transcripts are forwarded to the Appeals Board for review.

WHEREFORE, the Appeals Board affirms the preliminary hearing Order dated January 28, 1999, entered by Administrative Law Judge Steven J. Howard.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Brenden W. Webb, Overland Park, KS
Brian J. Doherty, Kansas City, MO
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

² Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

³ Thompson, Syl. ¶ 1.